

**BRG Harrison Lofts Urban Renewal LLC  
1050 Franklin Avenue, 2<sup>nd</sup> Floor  
Garden City, New York 11530**

August 14, 2018

Eric J. Wilson, Esq.  
Deputy Director for Enforcement  
& Homeland Security  
Emergency & Remedial Response Division  
U.S. Environmental Protection Agency  
290 Broadway, 17th Floor  
New York, NY 10007-1866

Re: Response to Notice of Potential Liability and Request to Enter Administrative Settlement  
Agreement Negotiations for the Vo-Toys Superfund Site, Harrison, New Jersey

Dear Mr. Wilson,

I write on behalf of BRG Harrison Lofts Urban Renewal LLC ("BRG") in response to your July 25, 2018 letter to BRG relating to environmental contamination at the former General Electric/RCA manufacturing plant in Harrison, New Jersey (the "Site").

BRG is familiar with the Site conditions described in your July 25th letter, and has worked cooperatively with the United State Environmental Protection Agency ("EPA") in an effort to address those conditions since negotiations with GE to remediate the property broke down in 2016. In fact, BRG formally notified both the New Jersey Department of Environmental Protection ("NJDEP") and EPA of the potential risks associated with the mercury contamination at the Site in a 90-day notice letter pursuant to the Resource Recovery and Conservation Act ("RCRA") on August 1, 2016.<sup>1</sup>

As you know, EPA convened a meeting on April 14, 2017 with GE and BRG to discuss this matter, and requested that the parties enter into an Order on Consent to characterize the extent of mercury contamination in the buildings. Although GE took a cooperative position at the meeting, it subsequently refused to sign such an Order. In summary, GE had been totally uncooperative with NJDEP, USEPA and BRG with regard to addressing its mercury contamination until June 2018.

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<sup>1</sup> Subsequent to service of the RCRA notice, due to GE's refusal to address the mercury contamination, BRG was constrained to commence litigation against GE (and other parties); that litigation, commenced in October 2016 and currently pending in the District of New Jersey, alleges claims for relief under CERCLA, RCRA, contract and common law.

BRG has participated in multiple meetings and calls with representatives from both agencies over the past several years, with the goal of obtaining complete site characterization information and determining the appropriate remedial steps to protect human health and the environment. In addition, since discovering the extensive mercury contamination caused by GE's and GE's predecessor's operations throughout each of the three buildings at the Site, BRG has ensured that the Site and buildings are secured and has provided both GE and EPA access to observe and sample environmental and building media throughout the Site.

Since BRG acquired the Site in 2015, and continuing through the present time, GE has been in control of the investigation and remediation of the Site, status as the Responsible Party for the remediation of the Site under NJDEP (Case # 12-06-06-0920-51; Program Interest # 020373), and now under EPA oversight. Until its recent agreement to undertake the long-sought characterization, GE had taken no steps to address its legacy mercury contamination.

In your letter, you identify BRG as a potentially responsible party ("PRP") under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as a current owner and operator<sup>2</sup> of a site where mercury has been released. BRG understands EPA's position, and intends to assert a bona fide prospective purchaser defense to any potential liability based on the following:

1. BRG was not the owner at the time of disposal – GE and its predecessors were the owners/operators at the time of disposal. All disposal took place prior to BRG's acquisition of the Site.
2. BRG acquired the Site in 2015 *after* undertaking due diligence that meets the "all appropriate inquiry" requirements under CERCLA § 101(40)(B), 107(q)(1)(A)(viii), 101(35)(A)(i),(B)(i).
3. BRG had no reason to know that the mercury contamination at the Site was so pervasive – BRG's due diligence revealed only a limited area of low level mercury contamination in a discrete portion of one floor of one building. BRG appropriately relied on the mercury survey conducted during due diligence, and had no reason to know that the mercury contamination in fact extends to at least all three floors of all three buildings.
4. BRG has taken reasonable steps to stop any continuing release, prevent any threatened future release, and prevent/limit any human, environmental or natural resource exposure to mercury contamination at the Site.
5. BRG has provided all legally required notices with respect to the discovery of the mercury contamination at the Site.
6. BRG has fully cooperated, assisted with and provided access to EPA and to GE, the party responsible for the mercury contamination, to conduct sampling and observe Site conditions.

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<sup>2</sup> BRG disputes the allegation that it is or ever has been an operator of the Site; regardless, BRG's status as a bona fide prospective purchaser provides a full defense as to both owner and operator liability.

7. BRG has not impeded the work of GE, NJDEP or EPA or their sub-contractors.
8. BRG has complied with all requests for information from EPA.
9. BRG is not affiliated with GE – BRG and GE entered into an indemnity and settlement agreement in 2014, which is now the subject of the litigation noted above. That agreement does not create an affiliation for the purposes of the bona fide prospective purchaser defense. See CERCLA § 101(35)(A), EPA “Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability,” at 5-6.

BRG is interested in participating in negotiations in order to have the Site finally remediated. BRG expects that such negotiations will take into account BRG’s bona fide prospective purchaser status, as well as GE’s recalcitrance to investigate or remediate its mercury contamination, which it left behind over 40 years ago.

Unlike GE, which has multi-billion dollar reserves to address its legacy environmental contamination throughout the country (see GE’s 2016 Annual Report, at page 201 of its Section 10-k filing with the Security and Exchange Commission), BRG does not have the funds to address the unforeseen GE mercury contamination at the Site. BRG, therefore, wishes to obtain additional information regarding “ability to pay” settlements, and will reach out to Mr. van Itallie separately, as suggested in your letter.

BRG is committed to continuing to cooperate with EPA and NJDEP to ensure that the Site is cleaned up and redeveloped to the benefit of the Town of Harrison and its residents. We appreciate your continued attention to this Site, and look forward to ongoing cooperation with EPA.

Sincerely,



Christopher V. Albanese

cc: Michael J. van Itallie, Esq., U.S. EPA  
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